

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH**

| | | |
|--|---|--------------------------------------|
| In the Matter of the Application of |) | No. PA22-00001 |
| |) | |
| Leo Suver, on behalf of Steve Burnstead |) | Mallard Pointe Final Plat Alteration |
| Construction, LLC |) | |
| |) | |
| |) | FINDINGS, CONCLUSIONS, |
| <u>For Approval of a Final Plat Alteration</u> |) | AND DECISION |

SUMMARY OF DECISION

The request for an alternation to the Mallard Pointe Final Plat, located at 21403 SE 43rd Way, to modify the impervious surface limitations table required to be included on the final plat documents, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 3, 2022, utilizing a hybrid approach allowing for participation in person or through remote access technology.

Testimony:

The following individuals provided testimony under oath at the open record hearing:

Valerie Porter, City Associate Planner
Leo Suver, Applicant Representative

Exhibits:

The following exhibits were submitted at the public meeting:

1. Plat Amendment Application, dated April 28, 2022
2. Applicant Project Narrative, received May 3, 2022
3. Final Plat Plan Set (6 Sheets), received August 18, 2022
4. Hearing Examiner Findings, Conclusions, and Decision – Mallard Bay Preliminary Plat (No. VAR16-00002; No. PP16-00005), dated October 16, 2017
5. Hearing Examiner Findings, Conclusions, and Decision – Mallard Pointe Final Plat (No. FP20-00001), dated January 29, 2021
6. Memorandum from Issaquah City Attorney Re: Hearing Examiner Jurisdiction Over Final Plat Amendments, dated June 13, 2022
7. Declaration of Service of Mailing, dated May 20, 2022, with Notice of Application, Vicinity Map, Site Map, and Mailing Labels

*Findings, Conclusions, and Decision
City of Issaquah Hearing Examiner
Mallard Pointe Final Plat Alteration
No. PA22-00001*

8. Affidavit of Sign Installation, dated September 23, 2022
9. Declaration of Service of Mailing, dated September 23, 2022, with Notice of Public Hearing, Site Map, and Mailing Labels
10. Notice of Public Hearing, for publication in *The Seattle Times* on September 23, 2022
11. Comment from Connie Marsh, dated September 29, 2022
12. Staff Presentation
13. Staff Report, dated September 22, 2022

The Hearing Examiner enters the following findings and conclusions based upon the comments and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Leo Suver, on behalf of Steve Burnstead Construction, LLC (Applicant), requests approval of an alteration to the Mallard Pointe Final Plat to modify the impervious surface limitations table required to be included with the final plat documents. The modified surface limitations table would reflect minor changes reducing 800 square feet of impervious surface for Lot 12 and redistributing this impervious surface to Lots 2 through 6 and 8 through 11. In addition, the table would be amended to reflect the allowable addition of 816 square feet of impervious surface to a storm drainage tract (Tract D). These minor changes would result in a total proposed impervious surface of 104,160 square feet, well under the maximum 286,751 square feet of impervious surface allowed for the approximately 13.1-acre property. *Issaquah Municipal Code (IMC) 18.07.360*. The property is located at 21403 SE 43rd Way.¹ *Exhibits 1 through 5; Exhibit 12; Exhibit 13, Staff Report, page 1 and 2.*
2. The City of Issaquah (City) determined that the final plat alteration application was complete on May 3, 2022. On May 20, 2022, the City mailed notice of the application property owners within 300 feet of the subject property, with a comment deadline of June 3, 2022. On September 23, 2022, the City provided notice of the open record hearing associated with the application by mailing notice to property owners within 300 feet of the subject property and by publishing notice in *The Seattle Times*. The Applicant posted notice of the hearing at the subject property the same day. The City received one comment in response to its notice materials from a member of the public, Connie Marsh, who expressed support for the proposed plat alteration. *Exhibits 7 through 11; Exhibit 13, Staff Report, page 2.*

¹ The subject property is identified by tax parcel numbers 505760-0010, 505760-0020, 505760-0030, 505760-0040, 505760-0050, 505760-0060, 505760-0070, 505760-0080, 505760-0090, 505760-0100, 505760-0110, 505760-0120, 505760-0130, 505760-0140, 505760-0150, 505760-0160, 505760-0170, 505760-0180, 505760-0190, 505760-0200, 505760-0210, 505760-0220, 505760-0230, 505760-0240, 505760-0250, 505760-0260, 505760-0270, 505760-0280, 505760-0290, 505760-0300, 505760-0310, 505760-0320, 505760-0330, 505760-0340. *Exhibit 13, Staff Report, page 1*. A legal description of the property is included on the proposed final plat plan set. *Exhibit 3.*

Environmental Review

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), during the preliminary plat approval process. City staff determined that additional SEPA review would not be required for the proposed final plat alteration. *Exhibit 4; Exhibit 13, Staff Report, page 2.*

Comprehensive Plan and Zoning

4. The subject property is designated “Multifamily Residential” by the City Comprehensive Plan and is zoned “Multifamily – High Density” (MF-H). The primary purpose of the MF-H zoning district is to “provide for high density multifamily neighborhoods, in direct proximity to a variety of urban services and commercial uses.” *IMC 18.06.100.H.* Single-family and multifamily residential uses are allowed in the MF-H zoning district. *IMC 18.06.130. Exhibit 13, Staff Report, pages 1 and 2.*

Project Background

5. The Applicant previously submitted a request for approval of a preliminary plat, together with a request for a critical areas variance, to subdivide the 13.1-acre subject property into 34 single-family residential lots, with associated improvements including an internal roadway, a public trail along SE 43rd Way, landscaping, stormwater management features, utilities, and frontage improvements. The City’s former Hearing Examiner held an open record hearing on the proposed preliminary plat and critical areas variance and approved the preliminary plat application on October 16, 2017, with 27 conditions. In approving the preliminary plat, the Hearing Examiner determined that, with conditions, the proposed subdivision would satisfy the subdivision approval criteria under the City code and the requirements for a land division under RCW 58.17.110(2), including requirements that appropriate provisions would be made for the “public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts.” *Exhibit 4.*

The former Hearing Examiner’s decision approving the preliminary plat request included the following condition, “Prior to Final Plat approval, an impervious surface table shall be provided that demonstrates the proposal does not exceed the impervious surface limitations for the property. The table shall provide a maximum square footage of impervious surface allowed per lot.” During the review process for the final plat, the Applicant provided an impervious surface table in accordance with this condition, which was approved by City staff. On January 29, 2021, the City’s current Hearing Examiner issued a decision approving the final plat, with conditions. *Exhibit 4; Exhibit 5; Exhibit 12; Exhibit 13, Staff Report, page 2.*

Plat Alteration

6. In a memorandum dated June 13, 2022, the City Attorney noted that the Issaquah Municipal Code does not specifically include a process for conducting final plat alterations but that the City could rely on the final plat alteration process under RCW 58.17.215. The City Attorney's memorandum further noted that the Hearing Examiner has jurisdiction to hear and decide applications for a final plat alteration under IMC 18.03.170. *Exhibit 6; Exhibit 13, Staff Report, page 3.*
7. As noted above, the Applicant requests an alteration to the final plat to modify the required impervious surface limitations table to reflect minor changes reducing the amount of proposed impervious surfaces on Lot 12 and increasing the amount of proposed impervious surfaces on Lots 2 through 6, Lots 8 through 11, and Tract D. As further noted above, with the minor change adding a total of 816 square feet of impervious surface, the plat would continue to comply with the 50 percent maximum impervious surface limitation related to lot coverage for the MF-H zoning district. *IMC 18.07.360.* The Applicant does not propose any other changes to the approved final plat. City staff reviewed the proposed stormwater management features for the project, which include conservation flow and sensitive lake water treatment, and determined that they would be adequate to address the final on-site impervious areas allocation and would comply with applicable stormwater requirements. *Exhibits 1 through 5; Exhibit 12; Exhibit 13, Staff Report, pages 1 through 3.*
8. City staff reviewed the proposal and determined that, with conditions, it would meet the criteria for a final plat alteration under RCW 58.17.215, noting:
 - The request for a final plat alteration is being made by the owner of all lots within the plat.
 - The City provided notice of the application and associated hearing in accordance with municipal code requirements.
 - The land subject to the alteration request is not part of an assessment district.*Exhibit 13, Staff Report, pages 1 through 4.*

Testimony

9. City Associate Planner Valarie Porter testified generally about the proposal and how, with conditions, it would meet the specific criteria for an alteration to a final plat under RCW 58.17.215. She noted that the Applicant previously received preliminary and final plat approval to subdivide the approximately 13.1-acre property into 34 single-family residential lots, with associated improvements. Ms. Porter explained that, as a condition of preliminary plat approval, the Applicant was required to provide an impervious surface table demonstrating that the proposed project would not exceed applicable impervious surface limitations. She stated that the Applicant submitted the required impervious

surface table and received final plat approval. Ms. Porter explained, however, that during the building permit review process, the Applicant requested to modify the impervious surfaces associated with 10 of the residential lots and a stormwater tract (Tract D). She stressed that, with this minor modification, the total impervious surface for the site would continue to be well under the 50 percent maximum impervious surface allowed for the property. *Testimony of Ms. Porter.*

10. Applicant Representative Leo Suver testified that the Applicant owns all of the lots within the plat subject to the final plat alteration request and that none of the lots would be marketed or sold until resolution of the plat alteration request. *Testimony of Mr. Suver.*

Staff Recommendation

11. Ms. Porter testified that City staff recommends approval of the final plat alteration request, with conditions. Mr. Suver testified that the Applicant understands and would comply with City staff's recommended conditions. *Exhibit 13, Staff Report, page 4; Testimony of Ms. Porter; Testimony of Mr. Suver.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for an alteration to a final plat. *IMC 18.03.170; IMC 18.13.160; IMC 18.13.200.*

Criteria for Review

The following RCW 58.17.215 provisions governing alteration of subdivisions apply to the final plat revision request:

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a

date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

RCW 58.17.215.

Conclusions Based on Findings

With conditions, the proposal would meet the specific requirements for approval of an alteration to a final plat under RCW 58.17.215. The application for an alteration to a final plat was submitted by the Applicant, which is the owner of the portion of the subject property that would be altered by the proposed revision. The City provided reasonable notice and opportunity to comment on the proposed plat alteration. The City received one comment from a member of the public in response to its notice materials, which expressed support for the proposed plat alteration. The proposed alteration would allow the Applicant to modify the impervious surface limitations table required to be included on the final plat drawing, which would reflect minor changes reducing the amount of proposed impervious surfaces on Lot 12 and increasing the amount of proposed impervious surfaces on Lots 2 through 6, Lots 8 through 11, and Tract D. The minor change in the location and amount of proposed impervious surfaces would not cause the total impervious surface area within the plat to exceed the 50 percent maximum allowable impervious surface for the approximately 13.1-acre property located within the City's MF-H zoning district. City staff reviewed the proposed alteration and determined that the proposed stormwater management features for the proposed development would continue to be adequate and in compliance with applicable stormwater regulations.

The Applicant does not propose any other changes to the approved plat, and the requested alteration would not affect the former Hearing Examiner's previous determination that the proposed subdivision, as conditioned, would satisfy the subdivision approval criteria under the City code and the requirements for a land division under RCW 58.17.110(2). The Hearing Examiner determines that the requested final plat alteration would be of public use and in the public interest. Conditions, as detailed below, are necessary to ensure that only minor, non-

substantive changes may be made to the final plat at the discretion of the City prior to recording the final plat mylars and that the Applicant records the final plat in accordance with applicable requirements. *Findings 1 – 11.*

DECISION

Based on the preceding findings and conclusions, the request for an alternation to the Mallard Pointe Final Plat, located at 21403 SE 43rd Way, to modify the impervious surface limitations table required to be included on the final plat drawing, is **APPROVED**, subject to the following conditions:

1. Minor, non-substantive adjustments may be made to the final plat at the discretion of the Director of the CPDD, prior to recording of the final plat mylars.
2. Prior to the Applicant recording of the final plat with King County, the necessary signatures of City representatives must be signed on the mylar sheets.
3. The Applicant shall record the approved final plat with the King County Department of Records and Elections.
4. A copy of the recorded final plat packages shall be provided to the CPDD within ten (10) days of recording with the King County Department of Records and Elections. The Applicant shall also submit an electronic copy of the plats in a format acceptable to the Public Works Department.

DECIDED this 28th day of October 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center